

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.181 of 1992

Arising Out of P.S.Case No. -226 Year- 1983 Thana -Bihpur District- BHAGALPUR

1. Rambhajjo Pandit,
2. Maharaj Pandit @ Bhatraj Pandit, both sons of late Sigeshwar Pandit,
3. Daldali Pandit &
4. Bhagwan Pandit, both sons of late Kulo Pandit.
All residents of village-Jhandapur, Police Station-Bihpur, District-Bhagalpur.
..... Appellants
Versus
The State of Bihar
..... Respondent

Appearance :

For the Appellants : Shri Vivekanand Singh, Advocate.
For the Respondent : Shri Abhimanyu Sharma, APP.

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
and
HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 19-01-2015

The present appeal is directed against the judgment of conviction dated 06.05.1992 and order of sentence dated 11.05.1992 passed by learned 7th Additional Sessions Judge, Bhagalpur in Sessions Trial Nos.63 of 1985/88 of 1988 by which the four appellants were held guilty of committing offences under Sections 302/34 and 201 IPC. After being heard on sentence on 11.05.1992 each of the appellants was directed to suffer rigorous imprisonment for life and also rigorous imprisonment for five years under Sections 302/34 and 201 IPC respectively.

2. Chhato Devi, the deceased had gone to scrap grass on



23.12.1983 and she did not return even by 6 P.M. on 24.09.1983. Her daughter Munni Devi stated to Satyadeo Pandit, the cousin of the husband of Chhato Devi that her mother had not yet come back after scrapping grass. The informant Satyadeo Pandit (P.W.6) enquired from Munni Devi (P.W.8) as to where his mother had gone for scrapping the grass, upon which, she stated that she had gone into Simrarahi Bahiyar from where she used to bring grass.

3. It was dark by that time when P.W.6 was informed by P.W.8 about her mother having not come back and, as such, he took with him his neighbours Ganesh Pandit (not examined), Shivnandan Pandit (P.W.5), Jai Kishore Pandit (P.W.9), Gajadhar Pandit (not examined) and others and set out on search of the deceased Chhato Devi, the wife of his cousin Suresh Pandit (P.W.2). It was quite dark by the time the informant and his companions had reached Simrarahi Bahiyar but could not find out the deceased Chhato Devi. The informant and his companions stayed over night in the *Basa* of his villager- Mahavir Pandit (not examined) and early in the morning at about 5 A.M. again started the search for Chhato Devi. During the course of search, the informant and others found there was darkening mark which was emanating from the maize field of his co-villager Ramsevak Kuer @ Polo Kuer and which was being tilted of sharing property by his other co-villager Nagina Kuer and the darkening mark



was legging up to the southern embankment of river Kosi. On following the trail, the informant found that the dead body of deceased Chhato Devi was lying in water and a jute rope tied around her waist to which a pitcher had also been tied. The dead body of deceased Chhato Devi was brought into the field of Ramsevak Kuer which was by the side of the river and on scrutiny, the informant found that the deceased Chhato Devi had been stabbed by sharp pointed weapon into her belly and back and she was killed that way. On hearing *hulla*, Chaukidar Muso Paswan, Chaukidar Naresh Paswan and others also reached there and leaving the two Chaukidars and others near the dead body, the informant P.W.6 Satya Deo Pandit came to the police station with *Dafadar* for lodging the report.

4. It appears that the FIR of the case (Ext-4) was drawn up and the investigation proceeded which ultimately ended in sending up of the four appellants for their trial.

5. The defence of the appellants was that they had falsely been implicated on account of the admitted land dispute by the informant and the witnesses especially P.W.4 Nunu Dai who happened to be the *Gotani* of the deceased Chhato Devi as well as her full sister who was married to the elder brother of P.W.2 Suresh Pandit.

6. During the course of the trial, 11 witnesses were



examined, out of whom, P.W.5 Shivnandan Pandit, P.W.8 Munni Devi and P.W.9 Jai Kishore Pandit were tendered for cross-examination. P.W.1 Shambhu Pandit stated during his evidence that he had also gone to scrap grass in Bahiyar and he found four appellants swimming across the river from the side of Simararahi Bahiyar and wiping their wet bodies with *gamcha* and they appeared a bit nervous. He further stated on the next day of the above incident, the dead body of deceased Chhato Devi had been recovered from the river and further that her husband Suresh Pandit (P.W.2) was not at his village, rather he was serving in Bhagalpur in a press. Deceased Chhato Devi, as per P.W.1, was looking after her landed properties and there was land dispute between the deceased Chhato Devi and the accused persons and that they had held out threats to her. During cross-examination P.W.1 stated that he was the *Gotiya* of P.W.2 Suresh Pandit who happened to be related as his grandfather and the houses of the two, i.e., P.Ws.1 and 2 were located side by side. As per P.W.1, the search for the lady had made in the very night of the incident.

7. P.W.2 Suresh Pandit was the husband of deceased Chhato Devi and whatever she stated was the statement virtually by P.W.4. As per P.W.4, she had also gone to scrap grass with the deceased Chhato Devi. The deceased Chhato Devi was scrapping



grass in the field of Polo Kuer. She stated that she heard cries at about 4 P.M. and on that day she rushed to the field of Babu Kuer and found appellants Maharaj Pandit @ Bhatraj Pandit, Daldali Pandit and Bhagwan Pandit were catching the deceased Chhato Devi while appellant Rambhajjo Pandit was stabbing her with a chhura. She proceeded to the killing when appellant Rambhajjo Pandit ordered the other appellants to catch her and further warned her that if she divulged the incident to anyone, she would also be killed. She was frightened and she came back to her house after the sunset. She did not state anything about the incident to any person while on way to her house or even to her family members. She stated that in the very next day in the evening at about 7 P.M. she boarded a train at Bihpur to reach Mahadeopur Ghat at about 9 P.M when she borrowed a steamer to cross the river. She came to Bararighat at about 10 P.M. and stayed there over night and reached Mohalla-Bhikhanpur, District-Bhagalpur at about 10-11 A.M. after enquiring about the place of residents of P.W.2 Suresh Pandit, her Dewar. She narrated the story to him hearing which, he lost his consciousness and after P.W.2 had regained his consciousness, both P.Ws.2 and 4 as may appear from the evidence of two witnesses came back to Bararighat and from there came back to their house in the evening, i.e., on the 24th of December, 1983 by 10-11 P.M. but did not find at the house of

P.W.2. as the same had been taken away by the investigating officer.

8. As may appear from the cross-examination part of P.W.4 in paragraph-27 after she had come back from Simrarahi Bahiyar, after seeing the occurrence, she had not stated anything to any person in the way or even to her neighbours or agnate relatives. P.W.4 as tight lipped had not stated anything about the incident even to her mother-in-law.

9. We have serious doubt in the competence of P.W.4 being an eye witness. We have already extracted the statement made in the first information report and we have noted that the daughter of the deceased, namely, Munni Devi (P.W.8) had complained to P.W.6 Satyadeo Pandit that her mother who had gone on the earlier day for scrapping grass had not reached by 6 P.M. on 24.12.1983. Thus, what appears from that statement is that there was serious anxiety in the family members as to where the deceased Chhato Devi had gone. The lady inmates of the house might not have been ventured out in the night of 23.12.1983 as also during the day time on 24.12.1983 but this much is clear and we accept it that they must be agitated and worried deeply on account of the deceased having not returned after scrapping grass. The further fact which we find from the FIR is that there is no mention in it that P.W.4 had also accompanied the deceased Chhato Devi to Simrarahi Bahiyar for scrapping grass. There was no reason



for Munni Devi (P.W.8) not to state to P.W.6 that P.W.4 Nunu Dai had also gone with the deceased Chhato Devi for scrapping grass. We expected P.W.8 Munni Devi to have come forward to state the above facts but to our dismay, she was tendered for cross-examination and we do not have any reason to know that she was tendered only because she was not ready to support that part of the story which was narrated to P.W.4 that she had also accompanied with the deceased Chhato Devi and had gone into Simrarahi Bahiyar for scrapping grass. This is the one reason, upon which, we have serious doubt to accept P.W.4 as a trustworthy witness.

10. The other reason which emerges from her own testimony is contained in paragraph-27 of her deposition, she had seen Chhato Devi being stabbed by the accused persons and she had also protested to their act. It might be that she had stated that she was threatened not to speak the above fact to any one but we do not inclined to accept the evidence of P.W.4 that she did not narrate the incident to any one because she was frightened. We have already noted that the family members must be agitated in their mind and worried seriously on account of the deceased Chhato Devi having not come back from the field. If P.W.4 had gone as per her claim every one could have rushed to her to make an enquiry as to why did not the deceased accompany her or what happened of her as she had come



back home alone. It would have been the most ordinary and natural reaction from all the family members. If P.W.4 had gone then they ought not to have narrated to P.W.5 the fact that the deceased Chhato Devi had not come back. We do not also see any reason as to why P.W.4 should not speak out to her family members in confidence at least to the daughter of the deceased Chhato Devi or to her mother-in-law and other family members. She was not stating anything but she was proceeding to Bhagalpur where as per her own statement, she had never been there as appears from paragraph-15 of P.W.4. She stated that she never had been to Bhagalpur prior to the day when she went there. If she had left her house for Bhagalpur, every family members of her should have put a very specific query to her as to what was the purpose to go to Bhagalpur and if that was also a fact, then that fact must have been appeared in the FIR as P.W.4 stated that she had left her house in the very night on 24.12.1983 to go to Bhagalpur to inform P.W.2 in the very night of the incident, i.e., on 24.12.1983. Taking up all circumstances, we find it extremely difficult to accept P.W.4 as a trustworthy witness.

11. Whatever P.W.2 stated all were facts which were narrated to him by P.W.4 and that he candidly been admitted in his evidence in paragraph-20 when he stated in the very first line of that paragraph that she accepted every statement of P.W.4 true which was

made to him. Thus, the evidence both of P.Ws.2 and 4 appears to us not acceptable.

12. So far as the evidence of P.W.1 is concerned, the circumstance appears innocuous inasmuch any person could have his personal reasons for swimming across the river quite naturally by steamer, one could be getting wet and he might be wiping his bodies with *gamcha* or any cloth for drying himself up. The accused persons were nervous as we in general statement not to reason the inference of culpability. The evidence of other witnesses, like, P.W.3 was disappearance of a Khurpi, a pitcher and string from his *Basa*, and further the informant and others came in search of the lady and when the dead body was found the same pitcher and rope were found tied to her body. This again does not lead to us to any concrete evidence and the inference of culpability of accused persons. P.W.5, we have already noted, was tendered and P.W.6, the informant has narrated the same story which was stated by him in the FIR which do not, in fact, lead to any inference of culpability of the accused persons. P.W.7 Puran Pandit was a witness of formal character and P.Ws. 8 and 9 were tendered. P.W.10 Suresh Mehta was a *Dafadar* of the Circle and he had spoken about the deceased having not returned home and finding out the dead body on search where he and couple of Chaukidars reached and a report was lodged. P.W.11 Muso Paswan

was a Chaukidar who had accompanied up to the dead body.

13. Thus, on reappraisal of the evidence of witnesses examined by the prosecution, we find that the charges have not been proved. In fact, the evidence of P.W.4 was not acceptable on account of reasons we have already assigned and likewise, the evidence of P.W.2 could also not be utilized in support of the charges. The evidence of other witnesses is of no consequence.

14. In the result, the appeal succeeds. The four appellants are acquitted of charges they had been convicted by setting aside the judgment of conviction and order of sentence. They are on bail. They are discharged from the liabilities of their respective bonds.

(Dharnidhar Jha, J)

B.Kr./-V.K.Pandey.

(Amaresh Kumar Lal, J)

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